

THE HONORABLE RONALD B. LEIGHTON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

PHILLIP L. McDANIEL,)	
)	No. 3:10-cv-05120-RBL
Plaintiff,)	
v.)	STIPULATION AND PROTECTIVE
)	ORDER
LEWIS COUNTY FIRE PROTECTION)	
DISTRICT NO. 8, et al.,)	
)	
Defendants.)	
_____)	

The undersigned counsel for the plaintiff, Phillip L. McDaniel, and for defendants Lewis County Fire Protection District No. 8, Lewis County Fire Protection District No. 8 Board of Commissioners, Anne Piper and John Doe Piper, Sharon Debuhr and John Doe Debuhr, and George Kaech and Jane Doe Kaech, (collectively, “defendants”), hereby stipulate and agree as follows and respectfully request that the following Protective Order be entered pursuant to Federal Rule of Civil Procedure 26(c) and Western District of Washington Civil Rule 5(g):

1. Certain documents or information may be provided by the defendants, the plaintiff, and/or third parties in this litigation in depositions and/or in response to requests for production, responses to requests for admission, answers to interrogatories, or other discovery

taken under the Federal Rules of Civil Procedure, which contain confidential information. These materials are hereafter referred to collectively as “Protected Information.”

2. The plaintiff and the defendants request confidentiality of Protected Information. Protecting the confidential nature of the Protected Information is warranted under Federal Rule of Civil Procedure 26(c) and Western District of Washington Civil Rule 5(g), as the Protected Information potentially contains personal and private information that would not otherwise be known to the public, and/or falls into categories that are exempt from disclosure under the Washington State Public Records Act, chapter 42.56 RCW, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936, or other statutes. Additionally, some of the business records of the defendants may contain confidential information regarding emergency preparedness tactics or strategies, the release of which could potentially be detrimental to public health and safety.

3. “Producing Party” shall mean the party or person providing discovery, or the party or person that originated the document. The Producing Party will designate any document or item containing Protected Information with the legend “Confidential.” Deposition or other pretrial or trial testimony that contains Protected Information may be designated “Confidential” by a statement on the record by counsel during such deposition or other pretrial or trial proceeding that testimony shall be designated as “Confidential.” Deposition or other pretrial testimony that contains Protected Information may also be designated as “Confidential” by stamping a “Confidential” legend on the portion of the transcript of such testimony and serving copies on the other parties, regardless of whether any confidentiality designation was made on the record when the testimony was given.

4. A designation by a party of documents and/or information as “Confidential” shall be made in good faith.

5. Copies of discovery materials and/or portions of deposition transcripts that have been designated Confidential, and the information therein, shall be received only by the Court, by the parties, counsel, counsel’s contract attorneys, the staff of counsel, including expert witnesses and secretarial and paralegal assistants, as necessary to assist in the preparation of this litigation, and by any witness shown such discovery materials by a party, provided the witness has been provided with a copy of this stipulation and Order and executed an agreement to be bound by this stipulation and Order. Exhibit A to this stipulation and Order shall be the form of any such agreement. Materials designated as Confidential shall be held confidential by such persons, shall not be made available or disclosed to any other person except upon the agreement of counsel for the Producing Party.

6. A party shall not be obligated to challenge the propriety of a Confidential designation at the time made, and failure to do so shall not preclude subsequent challenge. Failure to challenge the propriety of any designation shall not constitute an admission as to the propriety of the designation. A party who wishes to challenge another party’s designation of information as Confidential shall confer as required by Federal Rule of Civil Procedure 37 to resolve any differences as to the designation prior to filing a motion with the Court.

7. Protected Information shall be used only for the purpose of the prosecution, defense, or settlement of this action.

8. Nothing in this Order shall prohibit either the plaintiff or the defendants from seeking to introduce Protected Information at proceedings in this matter, if the party reasonably believes the Protected Information is necessary for the hearing, court proceeding, and/or motion

practice, or seeking to protect such information at trial. In the event that a party intends to enter any Protected Information of another into evidence, other than at trial, that party shall either (a) provide the other party's counsel with the best practical notice of its intent to file such Protected Information and will provide reasonable opportunity for the other party to obtain an order requiring that such Protected Information be filed under seal pursuant to any applicable Federal Rules of Civil Procedure and/or Local Rules of the Court; or (b) file a stipulation and proposed order to seal or motion to seal the Protected Information pursuant to any applicable Federal Rules of Civil Procedure and/or Local Rules of the Court. The stipulation or motion can either be filed before or with the document filed under seal. Where reasonably practical, only those portions of documents consisting of Protected Information shall be filed or lodged under seal.

9. Nothing in this stipulation shall be deemed to constitute a waiver of any objections as to the admissibility into evidence of any of the Protected Information during the litigation of this case.

10. The provisions of this Order, insofar as they restrict the communication and use of discovery materials, and the information contained therein, shall continue to be binding after the conclusion of this action, except to the extent production of documents is required by law.

11. This stipulation and Order is not intended to and does not restrict the parties from complying with other legal requirements that may otherwise compel disclosure.

12. The Court may enter an order consistent with this stipulation. The Court may change the terms of the protective order on its own motion after notice to the parties and an opportunity to be heard.

13. This stipulation and order shall survive the final termination of this action, and the Court shall retain jurisdiction to resolve any dispute concerning the use of information disclosed hereunder.

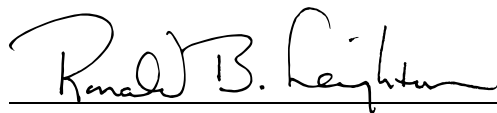
14. A proposed order accompanies this stipulation.

<p>MICHAEL & ALEXANDER, PLLC</p> <p>By: /s/ _____ Stephanie R. Alexander, WSBA #28007 Matthew J. Macario, WSBA #26522 Thomas P. Holt, WSBA #39722 Attorneys for Defendants Lewis County Fire Protection District No. 8, et al. 701 Pike Street, Suite 1150 Seattle, WA 98101 Phone: (206) 442-9696 Fax: (206) 442-9699 stephanie@michaelandalexander.com matt@michaelandalexander.com tom@michaelandalexander.com</p>	<p>THE ROSEN LAW FIRM</p> <p>By: /s/ _____ Jon Howard Rosen, WSBA #7543 Attorney for plaintiff Phillip L. McDaniel 705 2nd Avenue, Suite 1200 Seattle, WA 98104 Phone: (206) 652-1464 Fax: (206) 652-4161 jhr@jonrosenlaw.com</p>
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ORDER

The Court having considered the foregoing stipulation of the parties, it is hereby ordered that the stipulation of the parties is confirmed in all of its particulars.

DATED this 3rd day of September, 2010.



RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE

Presented by:

MICHAEL & ALEXANDER, PLLC

By: /s/ _____
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Approved as to form; notice of presentation
waived by:

THE ROSEN LAW FIRM

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EXHIBIT A TO STIPULATED PROTECTIVE ORDER

Acknowledgment

The undersigned, _____, in connection with the case of *McDaniel v. Lewis County Fire Protection District No. 8, et al.*, No. 3:10-cv-05120-RBL (United States District Court, Western District of Washington), hereby acknowledges that s/he received a copy of the Order in that action, has read the Order, understands it, and agrees to be bound by all the provisions thereof.

DATED this _____ day of _____, 20____.

Signature

Print Name